

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

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UNITED STATES OF AMERICA,  
STATE of WISCONSIN,  
STATE of ILLINOIS, and  
STATE of MICHIGAN,

*Plaintiffs,*

v.

DEAN FOODS COMPANY,

*Defendant.*

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Civil Action No. 10-C-00059 (JPS)

**PARTIAL MOTION TO DISMISS  
OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT**

Defendant Dean Foods Company (“Dean Foods”) hereby moves under Fed. R. Civ. P. 12(b)(6) to dismiss Count 2 of the Complaint in this action (the “fluid milk” claim) for failure adequately to plead an essential legal element of the claim, a relevant geographic market.

In the alternative, Dean Foods moves under Fed. R. Civ. P. 12(e) for an order requiring plaintiffs to provide a more definite statement of the alleged facts that must be pleaded to support a proper geographic market.

In asserting that Wisconsin, the Upper Peninsula of Michigan, and northeastern Illinois comprise the relevant geographic market for fluid milk sales, plaintiffs omit any allegation about the ability of customers in this area to turn to alternative suppliers of fluid milk or to resellers in the event of a significant price increase in the area or in any

particular identified locations within the area. For the reasons explained more fully in the accompanying memorandum supporting this motion, the omission of such allegations requires the dismissal of plaintiffs' fluid milk claim.

In the alternative, if there are facts adequate to support a relevant geographic market for fluid milk sales, plaintiffs should be required to provide a more definite statement of those facts so that Dean Foods has an adequate opportunity to respond to the geographic market plaintiffs are alleging.

The Court's resolution of this motion will necessarily frame the issues for discovery and the remaining litigation of this matter.

Dated this 18th day of February, 2010.

Respectfully submitted,

s/Nathan A. Fishbach  
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